UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

NORTH MEMORIAL HEALTH CARE[1] Employer and SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) HEALTHCARE MINNESOTA Petitioner	Case 18-RC-17692

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to add to its existing unit of full-time and regular part-time non-professional employees employed by the Employer at or out of the North Memorial Home Health and Hospice Office the following classifications of employees: clinical support staff, staffing specialist, reimbursement specialist, medical records clerk, receptionist, and coder. On the other hand, the Employer contends that the employees sought by Petitioner are in fact merely a department of the hospital, and that it is inappropriate to limit the unit as Petitioner requests. Rather, according to the Employer, Petitioner must seek (at a minimum) all unrepresented residual employees employed by the Employer who are non-professional or business office clericals. Moreover, according to the Employer, the unit must include all unrepresented employees who are

[1] The Employer's name appears as amended at the hearing.

non-professional or business office clericals in a unit consisting of all hospitals currently in an existing multi-employer group.

Based on a careful review of record evidence and Board law, I conclude that the unit sought by Petitioner is an appropriate residual unit to the existing North Memorial Home Health and Hospice unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[2]

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The first part of this decision is a review of the corporate structure, business and supervisory hierarchy of the Employer. The second section is a summary of current collective-bargaining agreements, and the units covered by those agreements, involving

[2] The Employer, North Memorial Health Care, is a Minnesota non-profit corporation with an office and place of business in Robbinsdale, Minnesota, where it operates an acute-care hospital. During calendar year 2009, the Employer derived gross revenues in excess of $500,000, and purchased and received at its Robbinsdale, Minnesota facility goods valued in excess of $50,000 directly from suppliers located outside the State of Minnesota.

the Employer and Petitioner. Third is a detailed description of employees employed in the Employer's Home Health and Hospice Office (HHHO), including their supervision and evidence of interchange with hospital employees. Fourth is an examination of functional integration between the Employer's hospital and the HHHO, including evidence of shared services and shared employees. Finally, I explain my conclusion that the unit sought by Petitioner is an appropriate residual unit to the existing North Memorial Home Health and Hospice unit.

Corporate Structure, Business and Supervisory Hierarchy

The Employer is an acute-care hospital, including a level 1 trauma center and, of course, other patient-care services. It has 518 beds and 4,500 employees. The average stay by a patient is 4.3 days. According to the Employer, the North Memorial HHHO is a department of the Employer. The HHHO is not separately incorporated, uses the same tax identification number as the Employer and, as detailed below, utilizes many services provided by the Employer in its operation of the HHHO. On the other hand, the HHHO has its own cost centers and financial reports, and it has its own bank account for the deposit of income and the payment of vendors.

The HHHO is located about one-half mile from the Employer's hospital in a building known as Terrace Mall (also referred to in the record as the south building). Terrace Mall includes tenants unrelated to the Employer, including a grocery store. It also includes one other department of the Employer—the emergency medical services department, which does CPR and emergency response training, apparently for members of police and sheriff departments. However, the HHHO and the emergency medical services department have their separate entrances—thus, they do not share

space or entrances. Near Terrace Mall (in fact, across an alleyway) is the Employer's outpatient center, which houses the Employer's billing department (referred to in the record at times as the north building).

The director of the HHHO is Tammy Moran. Moran's office is located in the HHHO facility. She reports to the Employer's vice president of emergency and enterprise operations, Mike Parrish. Also reporting to Parrish are the Employer's emergency, ambulance and sleep services. Parrish's office is located in the hospital. He reports to the Employer's chief operations officer, Pam Lindemoen.

The HHHO has three product lines. First, it provides hospital home care. This, of course, means that it provides various services to patients in their homes, including patient visits; bathing; light housekeeping; and activities for daily living (light exercise). For the most part, this aspect of the business deals with chronically ill patients or patients who need short-term care due to surgery, illness or injury. The care is given in patients' homes. Second, the HHHO provides residential hospice care, which is provided in an eight-bed facility located in Brooklyn Center. Patients near the end of life might go to this facility for their final days. Third, the HHHO is responsible for the palliative care unit, which is located in the hospital. The palliative care unit (also called 4 North in the record) consists of ten beds, and is for patients at the end of life who need inpatient care in a controlled setting. Ninety percent of the patients in the palliative care unit were first patients in the Employer's hospital. Most of the remaining 10 percent were home health care patients.

The Employer contends that the unit sought by Petitioner consists of 38 employees in the following classifications: coding specialist (1 employee); reimbursement specialist (9 employees); secretary 1 (1 employee); medical secretary I, II and III (11, 4 and 1 employee, respectively); staffing specialist (9 employees); and department assistant (2 employees). In its post-hearing brief, Petitioner acknowledges that it is seeking the classifications as identified by the Employer.

Current Collective-Bargaining Agreements Involving Petitioner and the Employer

Petitioner already represents a separate unit of employees employed by the HHHO. It has represented this separate unit since 1996, and the record includes the most recent contract covering this separate unit, which was effective from March 1, 2007 through February 28, 2010.[3] This contract is between Petitioner and "North Memorial Home Health." The collective-bargaining unit consists of homemaker companions[4] and home health aides employed by the HHHO. The HHHO employs about 50 home health aides. Nine of the 50 home health aides work at the Brooklyn Center residential hospice. The rest work in hospital home care, which is the HHHO's first product line. It is to this unit that Petitioner seeks to add the classifications described earlier herein, and Petitioner contends that the employees it seeks to represent constitute an unrepresented residual group to this unit (subsequently referred

[3] The Employer and Petitioner have agreed to a successor contract, but it is not yet printed.

[4] The record contains no further information on homemaker companions.

to as the home health unit, and sometimes referred to as the "small" unit in the record).[5] With regard to the palliative care unit, it is staffed by nursing assistants from the hospital, as well as RNs from the HHHO. In addition, some home health aides from the HHHO work in the palliative care unit. However, they do so on a voluntary basis and are not regularly scheduled to work in the palliative care unit. When they work in the palliative care unit, the home health aides are paid the wages set forth in the multi-employer contract (described below). When they work for the HHHO, the home health aides are paid in accordance with the collective-bargaining agreement covering the home health unit.

There is a second group of employees employed by the Employer that is represented by Petitioner. This group consists of many (although not all) non-professional employees and many (although not all) business office clerical employees employed by the Employer. According to the Employer, this group includes 850 employees employed by the Employer. However, 256 non-professional employees or clerical employees employed by the Employer at the hospital are not currently represented by any union. Included in this group are numerous classifications of employees, ranging from parking assistants to various aide categories to office employees to nursing assistants to certain maintenance employees to pharmacy techs.

[5] At one time the home health aides and homemaker companions were part of the broader multi-employer bargaining unit, further described below. However, in about 1996 they were taken out of the broader unit, and since 1996 have constituted a separate unit, pursuant to agreement of the Employer and Petitioner. According to the unrebutted testimony of an employee involved in contract negotiations in 1996, the separate unit was created in 1996 at the insistence of the Employer, which stated that the HHHO was a unique program with unique jobs and that the HHHO was not making money. The Employer insisted that costs needed to be cut, or the hospital would consider closing the HHHO. As a result of the separation, the HHHO unit agreed to a wage freeze in 1996, while other represented employees received a wage increase.

For example, included in this group are the office clerical employees employed in the Employer's billing department, which is located in the outpatient center, or north building, across the alley from Terrace Mall. This group of employees is part of a unit of employees that consists of non-professional and business office clerical employees employed by members of a multi-employer group, further described below.

The current contract between Petitioner and the multi-employer group is from July 29, 2009 through February 29, 2012. The multi-employer group consists of five hospitals or hospital systems in the Minneapolis/St. Paul metropolitan area. It is to this unit that the Employer contends the employees Petitioner seeks to represent constitute an unrepresented residual unit. Therefore, according to the Employer, the petition must be dismissed because Petitioner is not seeking to represent (at a minimum) all unrepresented non-professional and business office clerical employees employed by the Employer and, more importantly, all unrepresented non-professional and business office clerical employees of the multi-employer unit.[6]

Detailed Analysis of the Employees Employed by HHHO

The HHHO employs a number of employees not being sought by Petitioner in the instant petition. These employees include eight licensed practical nurses (LPNs). Three of the LPNs work at the Brooklyn Center residential hospice, and five work in the home health care area. These LPNs are represented by Petitioner as part of a multi-employer LPN bargaining unit. The HHHO also employs 75 registered nurses (RNs). Sixty of the 75 RNs make home visits as part of the home health care product line, eleven RNs

[6] The record includes descriptions of some of the non-professional jobs at other members of the muti-employer group currently unrepresented by any union.

work in the palliative care unit, and four RNs work at the Brooklyn Center residential hospice. These RNs are represented by the Minnesota Nurses Association. Finally, the HHHO employs an inventory aide. The inventory aide orders supplies and puts paperwork and packets together for clinicians. Supplies are ordered from the hospital's material manager. The inventory aide is one of 14 employed at the hospital, all of whom are in the multi-employer bargaining unit.[7]

Besides the home health aides and homemaker companions (who are already represented by Petitioner in the home health unit), the remaining HHHO employees are the non-professional and business office clerical employees sought by Petitioner in the instant petition. Each classification is described below in detail.

There are nine staffing specialists. They staff patient visits for all disciplines (physical, occupational, and speech therapies; home health aides; and social workers). There are also nine reimbursement specialists. They receive payments for services performed by HHHO employees (either from insurance companies or patients themselves); they post payments to the correct patient for the correct activity; they perform follow-ups where insurance denies claims or for reductions in payment, and to

[7] Also employed by the HHHO are physical and occupational therapists, social workers, massage and music therapists. Very little information is included in the record regarding their duties, regarding whether they work full-time for HHHO, and regarding their status as employees represented by unions. In this regard, I note that HHHO Director Moran was inconsistent about the status of the massage and music therapists. At one point in the record she testified that the massage and music therapists work exclusively for the HHHO. However, at a different point in the record she testified they also work for the hospital. The record does establish that, when employed by the HHHO, the massage and music therapists report to HHHO Home Health Manager Mary Zieba. The occupational, physical and speech therapists report to Rehab Supervisor Karen Riddle, who in turn reports to Home Health Manager Karen Persico. Persico reports to Director Moran. The precise status of the therapists and social workers appears irrelevant because the Employer does not contend that they would be included in either the residual unit limited to the Employer's facility or the residual unit encompassing the multi-employer group.

collect from patients; they enter information regarding daily visits by field staff so the visits can be billed; and they verify insurance coverage. The medical secretaries I, II and III are akin to medical records positions, with the medical secretary I being the highest classification of the three. Among their duties are admitting and discharging patients, performing receptionist duties, scanning documents into files or records, and performing other medical records functions. The HHHO maintains a paper system for medical records in contrast to the Employer's hospital, which has an electronic system. Two department assistants work for Lifeline—an alarm system for people who have fallen and cannot get up. This service is available to anyone—not just patients of the Employer. The department assistants coordinate installation and deactivation of the alarms, and bill for the monthly fee. They work in an office located in the hospital. One of the two department assistants also works regularly (on a weekly basis) as a reimbursement specialist at the HHHO facility. The coding specialist codes all time spent with patients for billing purposes. The coding specialist therefore determines the appropriate code to use depending on the condition of the patient and the services provided.

Reporting directly to HHHO Director Tammy Moran are four managers: Home Health Manager Karen Persico, Business Office Supervisor Julie Voelker, Health Information Manager Beth Soderberg, and Hospice Manager Beth Branz. These managers have offices located at the HHHO facility. The secretary I and medical secretaries I and II report directly to Soderberg. On the other hand, the medical secretary III is supervised by Voelker. Voelker also supervises the reimbursement specialists and coder. The department assistants are supervised by Karen Persico.

The home health aides at the Brooklyn Center residential hospice (as well as the LPNs and RNs who work there) report to Mary Zieba, hospice home care and resident supervisor. Zieba reports to Hospice Manager Beth Branz. HHHO Private Duty Supervisor Kathy Gustafson supervises the remaining home health aides. Gustafson reports to Karen Persico. Home care RNs are supervised by Chris Fagnon Olson or Noel Mooneyam. Olson and Mooneyam report to Karen Persico. Employees in the palliative care unit report to Tammie Norrish, inpatient and liaison supervisor. Norrish reports to Beth Branz. The inventory aide reports to Voelker.

Thus, Director Moran oversees the entire HHHO program. None of the employees in the HHHO program reports to anyone outside of the HHHO program, and none of the HHHO managers or supervisors supervises employees not employed by the HHHO. Hiring decisions, discipline, performance evaluations, training, scheduling, and day-to-day oversight of employee work in the classifications sought by Petitioner are the responsibilities of the immediate supervisors of each classification.

Similarly, the home health aides are hired, disciplined, evaluated, trained, scheduled, and provided day-to-day oversight by their immediate supervisors, already identified above. Home health aides are assigned to patients (but not hours of work) by the staffing specialists. In fact, the most recent collective-bargaining contract between Petitioner and the HHHO covering home health aides includes language for how staffing specialists are to schedule home health aides. Home health aides visit the HHHO at least once per week, either for assignments or staff meetings, and they interact with staffing specialists concerning patient assignments on a daily basis.

All of the employees in the classifications sought by Petitioner, except the department assistants, report to work each day at the HHHO, located in the south building of Terrace Mall. They are never scheduled to work in any other location, and they generally work Monday through Friday (the exception being staffing specialists, who also provide weekend coverage). There is no evidence that any HHHO employees ever work in the hospital as substitutes for hospital employees (but as noted, a few work for both the HHHO and the hospital), and no evidence that hospital employees ever work for the HHHO.

The Employer contends that there are a number of distinctions that demonstrate a lack of community of interest between home health aides and the office employees sought by Petitioner. Home health aides are required to have drivers' licenses and CPR certification, pass competency tests required by Medicare, and have physically demanding jobs. None of these is required of the employees in the unit sought by Petitioner in the instant petition.

Functional Integration of the HHHO and the Employer's Hospital

The HHHO and the Employer's hospital share a number of services. For example, the hospital dietary department provides food for patients at the Brooklyn Center residential hospice. The food is delivered twice a week and then reheated by HHHO staff. In addition, some hospital employees, who are members of the multi-employer bargaining unit, perform yard care and snow removal at the Brooklyn Center hospice. Hospital maintenance employees also provide assistance with heating and the hot-water heater at the Brooklyn Center hospice.

The HHHO also relies on the hospital's billing department to make daily deposit transactions and to run payments made by credit cards. The reimbursement specialists physically walk both deposits and credit-card transactions across the alley to the billing department located in the north building. It appears, however, that deposits are taken to the hospital's billing department only so that they are transported by armored vehicle to the bank. Moreover, the HHHO has its own bank account and billing system, which is not used by the hospital.

The HHHO utilizes the hospital's phone system, and, in fact, calls for the HHHO are routed to the hospital's call center when the HHHO is closed. Specimens from patients are sent to the hospital lab; the hospital's IT department maintains the HHHO's computers and telephones; and clerical documents from the HHHO go to the hospital's word processing department and, once approved by the HHHO, to the hospital's print shop for printing.

HHHO Director Moran serves on numerous committees with managers and employees from the hospital. Hospital staff assists the HHHO with risk management; security; and processing and payment of bills, as well as payroll and monthly and year-end financial statements.

In addition to services, the HHHO and the hospital share some personnel. Two music therapists, one speech therapist, and one massage therapist from the hospital visit the palliative care unit once or twice per week. Their time spent at the palliative care unit is billed to the HHHO patients. HHHO's Medical Director John Degelau conducts rounds on the palliative care unit, as well as other parts of the hospital. The HHHO takes light-duty employees from the hospital up to two weeks per month. They

help with paperwork. "Some" of the 11 RNs in the palliative care unit also work in the hospital, although none of the HHHO's LPNs works in the hospital. Finally, someone (not identified in the record) from the HHHO meets daily with the hospital's care management department employees to discuss patient plans and, more specifically, the transfer of patients from the hospital to palliative, hospice or home health care.[8]

The HHHO and the rest of the Employer's operation are overseen by one Human Resources office. Job vacancies are posted by the HR office for openings at both the HHHO and the hospital, and the HR office conducts initial screening of applicants for both. Moreover, all employees (including HHHO employees) attend an orientation program at the hospital, although the HHHO has its own orientation program unique to its employees.

The HHHO utilizes the same disciplinary system as the hospital, and the Human Resources office prefers to be involved with any discipline above a written warning. All employees not covered by collective-bargaining agreements have the same fringe benefits.

Finally, the Employer points out that some of the job functions performed by employees in the unit sought by Petitioner are exactly the same as job functions performed by employees in the multi-employer unit. Specifically, employees employed in the Employer's business office (which is in the north building) and in the Employer's medical transportation department (which is in Brooklyn Center) receive checks from patients and insurance companies and post these payments to patient accounts. In

[8] The HHHO also has a chaplain. The Employer's evidence on whether he is shared with the hospital is inconsistent.

addition, they follow up on unpaid bills and insurance denials, and attempt to collect on unpaid bills. They also perform change entries and prepare the entries for billing. Medical transportation employees and registration clerks (who are not in the business office but are in the multi-employer bargaining unit) also gather demographic and insurance information from patients and verify insurance coverage. Finally, business office employees and registration clerks scan documents.

Analysis[9]

Because the Employer is an acute-care hospital, under the Board's Health Care Rules, there are eight appropriate units for collective bargaining.[10] These eight appropriate units are, at a minimum, hospital-wide units. The purpose of the Board's rules regarding units in acute-care hospitals is to avoid proliferation of units and unnecessary disruption of care of patients. As a result, the Board has also made clear that in seeking a residual group of unrepresented employees, unions must seek all unrepresented residual employees. For example, in *St. John's Hospital*, 307 NLRB 767 (1992), the Board refused to find appropriate a separate unit of plumbers and refrigeration employees because there were additional unrepresented skilled

[9] In its post-hearing brief, Petitioner urges three broad points: (1) The HHHO is not an acute-care hospital, and therefore the Board's Health Care Rules are inapplicable; (2) The HHHO constitutes a single facility, and therefore Board cases regarding single-facility units are applicable; and (3) Because the HHHO is not an acute-care hospital, the Board's test set forth in *Park Manor Care Center, Inc.*, 305 NLRB 872 (1991) should be utilized. I reject all of these arguments. I do not consider the HHHO to be a separate facility, and therefore I consider the HHHO to be a department of an acute-care hospital. Thus, in my view the Board's Health Care Rules do apply in this matter.

[10] The eight appropriate units are: (1) all registered nurses; (2) all physicians; (3) all professionals, except for registered nurses and physicians; (4) all technical employees; (5) all skilled maintenance employees; (6) all business office clerical employees; (7) all guards; and (8) all non-professional employees, except for technical employees, skilled maintenance employees, business office clerical employees, and guards. 54 Fed. Reg. at 16347, 29 C.F.R. at Sec. 103.30(a).

maintenance employees employed by the Employer. The Board applied its long-settled rule that an incumbent union wishing to represent employees residual to those in an existing unit could only do so by adding them to the existing unit and could only do so by seeking to add to the existing unit all remaining skilled maintenance employees residual to (that is, unrepresented) the existing unit. Thereafter, in *St. Mary's Duluth Clinic*, 332 NLRB 1419 (2000), the Board applied the same rule to non-incumbent unions. That is, it held that in an acute-care hospital where there is a non-conforming bargaining unit consisting of some, but not all, of the employees who would otherwise constitute an appropriate unit under the Board's Health Care Rules, the Board will process a petition by a different labor organization for a residual unit consisting of the remaining unrepresented employees. However, the non-incumbent union must seek to represent all remaining unrepresented employees in one of the eight appropriate units.

The Board's concern regarding proliferation of bargaining units includes concerns about residual units to multi-employer units. In a case predating the Board's Health Care Rules, the Board dismissed a petition where the union sought a residual unit limited to all unrepresented technical employees employed at an acute-care hospital. Rather, the Board agreed with the employer that the appropriate unit was a unit of unrepresented technical employees residual to an established multi-employer unit consisting of technical employees employed by the employer and by other members of the multi-employer group. *St. Luke's Hospital*, 234 NLRB 130 (1978). See also *The Los Angeles Statler Hilton Hotel*, 129 NLRB 1349 (1961).

The Employer relies on these broad principles in support of its position that the unit sought by Petitioner is inappropriate. That is, according to the Employer, the

appropriate existing collective-bargaining unit to focus on is the multi-employer bargaining unit. Therefore, Petitioner (or any union) must seek to represent all unrepresented non-professional employees and business office clerical employees employed by the Employer or other members of the multi-employer group, in order for the unit to be an appropriate residual unit. Obviously, Petitioner is seeking to represent only a small portion of the Employer's unrepresented non-professional employees and business office clericals—let alone those employed by members of the multi-employer group. Finally, according to the Employer, even if an appropriate residual unit is limited to the Employer's unrepresented non-professional employees and business office clericals, that residual unit consists of 256 currently unrepresented employees—and not the HHHO employees sought by Petitioner.

While the Employer's reliance on these broad principles has some surface appeal to it, the Employer's position also ignores the existence of the non-conforming home health unit.[11] The Employer fails to adequately explain why the unit sought by Petitioner is a residual unit to the multi-employer unit and not the home health unit. In this regard, I note that in *St. Luke's Hospital*, supra, the Board explained its decision that the appropriate residual unit must be coextensive in scope with the multi-employer unit because:

> The unrepresented technical employees herein do not, contrary to the Acting Regional Director's finding, constitute a "different category" from the Employer's represented technical employees. Nor do they constitute a homogeneous, separately identifiable group with internal cohesiveness,

[11] In its post-hearing brief, the Employer refers to the home health unit as a "peripheral fringe group" to the larger non-professional unit. While I am unclear as to what "peripheral fringe group" even means, the record evidence is very clear that the home health aides constitute a separate non-conforming health care unit.

> within the meaning of *Los Angeles Statler*. Thus, they work in different units which are physically separated from each other, are variously supervised, and have the same terms and conditions of employment as other noncontractual employees of the hospital. They have no greater community of interest with one another than they have with the Employer's represented technical employees or with their counterparts employed by other members of the affiliation and similarly unrepresented.

234 NLRB at 131.

Unlike *St. Luke's Hospital*, I conclude that the employees sought by Petitioner constitute a homogeneous, separately identifiable group with internal cohesiveness. First, the employees are physically separate from other employees of the Employer. Second, the employees are separately supervised from other employees of the Employer. In fact, employees have two or three separate levels of supervision before there is a common manager with hospital employees. Third, there is no evidence of interchange. Employees in the hospital never substitute in the HHHO, and employees in the HHHO never substitute for employees in the hospital.

Finally, and most importantly, the Employer instigated and has maintained a separate unit of home health aides employed in the HHHO, and that separate unit has existed for 14 years. As a result, the remaining unrepresented non-professional and business office clerical employees employed in the HHHO are an appropriate residual unit to the HHHO home health unit, based on a community-of-interest analysis. I note that the employees sought by Petitioner interact with home health aides on a daily basis (and not with hospital employees); that the employees sought by Petitioner perform work that is functionally integrated with the work of home health aides (and not with

hospital employees);[12] that the employees sought by Petitioner share some common supervision with home health aides (and all of them ultimately report to Director Moran); that the HHHO has its own budget; and, finally, that the function of HHHO differs from the function of the hospital. While both the HHHO and the hospital are involved in patient care and employees employed in both utilize some of the same skills, the HHHO focuses on two distinct specialized aspects of patient care—patients who are dying and patients whose care is provided at home. As a result, except for the palliative care unit, none of the care provided by the HHHO is hospital-based. Moreover, even with regard to the palliative care unit, it is the home health aides who are already in a separate unit—and not the employees sought by Petitioner—who work there. Thus, in my view the record is clear that the employees sought by Petitioner have far more in common as a residual group with the home health unit, and little or nothing in common as a residual group to the multi-employer unit, which distinguishes the instant case from *St. Luke's Hospital*, supra.

Thus, I conclude that the unit sought by Petitioner constitutes a separate homogeneous group rather than a group residual to the multi-employer unit. I further conclude that established bargaining history supports a conclusion that a separate HHHO unit already exists. Finally, I conclude that the employees sought by Petitioner share a community of interest with the existing home health unit, and therefore are an appropriate residual unit to the home health unit. *NLRB v. American Printers and Lithographers*, 820 F.2d 878, 125 LRRM 2593 (7th Cir. 1987).

[12] Employees sought by Petitioner schedule the work of home health aides by assigning patients, code the work of home health aides and bill their hours of work, and are responsible for collecting and processing payments for services rendered by home health aides.

I further conclude that the residual unit sought by Petitioner is consistent with Board policy concerning bargaining units in acute-care hospitals. The Board's Health Care Rules make clear that where there are existing non-conforming units, exceptions may be made to the Board's eight appropriate units in acute-care hospitals. Following the Board's description of the eight units is the following language:

> (c) Where there are existing non-conforming units in acute care hospitals, and a petition for additional units is filed . . . the Board shall find appropriate only units which comport, *insofar as practicable*, with the appropriate unit set forth in paragraph (a) of this section.

54 Fed. Reg. at 16347, 29 C.F.R. at Sec. 103.30(a) (emphasis added).

In reaching this conclusion, I acknowledge that the Employer presented a great deal of evidence that the HHHO is functionally integrated with the hospital, that some employees work in both the hospital and the HHHO, and that the unrepresented HHHO employees share the same benefits as other hospital employees who are unrepresented. However, this evidence is not dispositive because of the existence of the separate home health unit. Thus, HHHO home health aides share the same telephones, IT, security and maintenance staff, and HR office as hospital employees; and yet the Employer placed them in a separate unit from hospital employees. For example, any functional integration that is established by the fact that hospital employees provide food to the Brooklyn Center residential hospice establishes that hospital employees and home health aides are functionally integrated. It hardly establishes functional integration with the employees sought by Petitioner in this case—who do not work at the Brooklyn Center residential hospice.

Similarly, the Employer's claim that the petitioned-for unit supports the entire HHHO staff (including RNs, LPNs and therapists) is largely irrelevant. The RNs, LPNs

and therapists are not in the unit that the Employer argues is the overall unit to which the unit sought by Petitioner is residual. Rather, the RNs are in a separate unit of RNs, and the LPNs are in a separate unit of LPNs. Thus, most of the Employer's evidence of functional integration applies to the HHHO home health aides, who are already represented in a unit separate from the hospital or multi-employer unit. Whatever functional integration the Employer contends makes Petitioner's residual unit inappropriate would also make the existing home health aide unit inappropriate. Moreover, this separate unit exists in spite of the fact some home health aides work in the hospital with nursing assistants who are in the multi-employer bargaining unit. In this regard, I note that there is no evidence that any of the employees Petitioner seeks to add to the home health unit ever work in the hospital. Finally, any difference in benefits between home health aides and the employees sought by Petitioner is due to the existence of a collective-bargaining agreement covering home health aides.

In accordance with Board policy, the employees sought to be added to the home health aide unit will be given an opportunity by a self-determination election to express their desires with respect to being included in the existing bargaining unit currently represented by Service Employees International Union (SEIU) Healthcare Minnesota. Accordingly, I shall direct an election in the following voting group:

> All full-time and regular part-time employees employed at or out of the Employer's Home Health and Hospice Office, including staff specialists, reimbursement specialists, secretary I, medical secretary I, medical secretary II, medical secretary III, department assistants and coding specialists; excluding guards and supervisors as defined in the Act, as amended.

If a majority of the employees in the above voting group cast their ballots for Service Employees International Union (SEIU) Healthcare Minnesota, they will be taken

to have indicated their desire to constitute a part of the existing unit of home health aides and homemaker companions employed at the Employer's Home Health and Hospice Office currently represented by Service Employees International Union (SEIU) Healthcare Minnesota, and Service Employees International Union (SEIU) Healthcare Minnesota may bargain for such employees as part of that unit. If a majority of them vote against Service Employees International Union (SEIU) Healthcare Minnesota, they will be taken to have indicated a desire to remain outside the existing unit and unrepresented by Service Employees International Union (SEIU) Healthcare Minnesota.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned among the employees in the group found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date below, and who meet the eligibility formula set forth above. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are persons who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who

have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.[13]

Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **Service Employees International Union (SEIU) Healthcare Minnesota**.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 – 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by 5:00 p.m. (EDT) on April 19, 2010**. The request may be filed through E-Gov on the Board's website, www.nlrb.gov,[14] but may not be filed by facsimile.

[13] To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. In order to be timely filed, this list must be received in the Minneapolis Regional Office, 330 South Second Avenue, Suite 790, Minneapolis, MN 55401-2221, on or before close of business **April 12, 2010**. No extension of time to file this list may be granted by the Regional Director except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

[14] To file a request for review electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-filing link on the menu. When the E-file page opens, go to the heading Board/Office of the Executive Secretary and click the "File Documents" button under that heading. A page then appears describing the E-filing terms. At the bottom of the page, check the box next to the statement indicating that the user has read and accepts the E-File terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the "Submit Form" button. Guidance for E-Filing is contained in the attachment supplied with the Regional Office's original correspondence in this matter and is also located under "E-Gov" on the Board's website, www.nlrb.gov.

Signed at Minneapolis, Minnesota, this 5th day of April, 2010.

/s/ Marlin O. Osthus

Marlin O. Osthus, Regional Director
National Labor Relations Board – Region 18
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221